



IN THE CIRCUIT COURT OF BRADLEY COUNTY
STATE OF TENNESSEE

KURT HERSTON
LEKEISHA ANN HERSTON,

Plaintiff,

DOCKET No. _____
JURY TRIAL DEMANDED

versus

MCLANE/MIDWEST, INC, MCLANE
BEVERAGE DISTRIBUTION, INC.,
MCLANE COMPANY, INC.,
MCLANE FOODSERVICE DISTRIBUTION,
INC., MCLANE FOOD SERVICE, INC.,
JOHN DOE

Defendants.

FILED
2020 OCT 20 PM 3:01
GAYLA H. MILLER
CIRCUIT COURT CLERK

COMPLAINT

COMES NOW the Plaintiff, KURT HERSTON, (hereinafter "Herston") by and through counsel, and brings this Complaint against the Defendants MCLANE/MIDWEST, INC, MCLANE BEVERAGE DISTRIBUTION, INC., MCLANE COMPANY, INC., MCLANE FOODSERVICE DISTRIBUTION, INC., MCLANE FOOD SERVICE, INC., and JOHN DOE and alleges as follows:

1. The Plaintiff, Herston is an adult resident and citizen of Georgia.
2. Defendants, MCLANE/MIDWEST, INC, MCLANE BEVERAGE DISTRIBUTION, INC., MCLANE COMPANY, INC., MCLANE FOODSERVICE DISTRIBUTION, INC., MCLANE FOOD SERVICE, INC., are believed to be corporations authorized to do business within the State of Tennessee, organized under the laws of the State of Georgia, and are subject to the jurisdiction of this court by virtue of committing a tortious act(s) and/or omissions described hereinafter within the confines of Bradley County, Tennessee. John Doe upon information and belief is a Georgia Resident although his address is not known, but at

all times relevant to this Complaint was an employee and/or agent of one of the above Corporate Defendants making them liable for his negligent acts or omissions.

3. This Honorable Court has jurisdiction over this matter, which is based upon claims for relief by Herston arising from containers of product delivered and stacked by Defendant which were done so improperly causing them to collapse and fall into Herston in Bradley County, Tennessee on November 1, 2019.

4. Venue is appropriate with this Court, as the Defendants routinely do business within Bradley County and committed tortious acts and or omissions within Bradley County, Tennessee.

FACTS

5. On or about November 1, 2019, Herston was working as the manager for Taco Bell in Bradley County, when the Defendants had made a delivery of product to said business. John Doe, an employee/agent for one or more of the corporate defendants who had previously been advised about stacking said product so that it did not collapse and fall, negligently unloaded said product causing a dangerous condition. As a result of the actions of John Doe which are imputed upon one or more of the Corporate Defendants, his unsafe stacking collapsed and fell landing on the neck and back of Herston causing him to suffer personal injury to his neck and low back resulting in extensive medical treatment and Herston being taken off from work resulting in loss wages. Said negligent and/or wanton conduct of the defendants was the proximate cause of Herston's injuries and damages hereinafter described.

6. Herston alleges that the injuries and damages hereinafter described are a proximate consequence of the negligent, wanton and/or wrongful conduct of the Defendants and their employees and agents. Plaintiff has incurred medical billing in the known amount of

approximately \$60,000.00 to date, although this is not a complete amount owed for services performed by the providers. Herston continues to receive medical treatment to address his injuries caused by the acts of the Defendants.

7. The aforesaid wrongful, negligent and/or wanton conduct of each of the above-described defendants combined and concurred, and as a proximate consequence thereof, Herston was injured and damaged as follows:

- a. He was caused to suffer serious bodily injuries which were attended by great physical pain and mental anguish;
- b. He was caused to be permanently injured;
- c. He was caused and will be caused in the future to expend large sums of money in the nature of doctor, hospital, drug and other medical expenses in and about an effort to heal and cure said injuries;
- d. He was caused to be permanently unable to pursue many normal and usual activities;
- e. His earning capacity was caused to be greatly and permanently diminished;
- f. He was caused to lose time from employment thereby sustaining a loss of earnings;
- g. All other damages to which he may be entitled by law.

COUNT I
Negligence

8. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

9. At the times set forth hereinabove, the Defendants negligently performed duties associated with their job of delivering product in a safe manner which caused the boxes being

delivered to strike the Plaintiff thereby causing the Plaintiff to sustain severe injuries and damages as set forth hereinabove.

10. As a direct and proximate consequence of the above-described negligent and wrongful conduct of Defendants, the Plaintiff has been injured and damaged as described hereinabove.

COUNT II
Wanton and Reckless Conduct

11. The Plaintiff hereby adopts and incorporates by reference the allegations of the preceding paragraphs of the Complaint.

12. At the times set forth hereinabove, the Defendants wantonly and/or recklessly performed duties associated with the delivery of product causing a box or boxes to strike the Plaintiff thereby causing the Plaintiff to sustain severe injuries and damages as set forth hereinabove.

13. As a direct and proximate consequence of the above-described wanton and reckless conduct of Defendants, the Plaintiff was injured and damaged as described hereinabove.

COUNT III Loss of Companionship

14. At all relevant times, LEKEISHA ANN HERSTON was the wife of Plaintiff Kurt Herston.

15. As a result of the negligence acts of the Defendants, Lekeisha Herston lost the services and companionship of her husband for which the Defendants are liable.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS;

a) That Summons and Process be issued, according to law and be served upon the

Defendants requiring them to appear and respond to the Complaint within the time prescribed by law;

- b) That a jury be impaneled to try the issues of this case, when joined;
- c) That the Plaintiff, Herston, be awarded a judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be determined by a jury of his peers plus interest and costs of this matter in an amount no less than \$200,000.00;
- d) That Plaintiff, Keisha Herston be awarded a judgment against the Defendants, jointly and severally, for compensatory damages in an amount to be determined by a jury of her peers plus interest and costs of this matter in an amount no less than \$10,000.00;
- e) That all costs of this action be awarded to the Plaintiff, with the Defendants being held responsible for all payment thereof;
- f) That the Court grant to Plaintiffs all such other and further relief as is deemed appropriate.

HARRISS HARTMAN LAW FIRM, P.C.

BY 

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